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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

HANH THI MY DO,

Plaintiff and Appellant,

v.

TWIN TOWN CORPORATION,

Defendant and Respondent.

G055258

(Super. Ct. No. 30-2015-00823094)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, David R. Chaffee, Judge. Reversed.

Hanh Thi My Do, in pro. per.; Thomas Vogeles & Associates, Timothy M. Kowal and Brendan M. Loper for Plaintiff and Appellant.

Lewis Brisbois Bisgaard & Smith, Barry G. Kaiman, Jeffery A. Miller and Mason T. Smith for Defendant and Respondent.

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Hanh Thi My Do appeals from the judgment following a court trial in her personal injury action against Twin Town Corporation. Do argues the trial court erred twice in denying her a jury trial—first by accepting a waiver of her right to a jury trial from an attorney who was not her attorney of record, and second by refusing to relieve her of that waiver the next morning, when she attempted to revoke it before the parties gave their opening statements at trial. We agree with both arguments.

Both parties initially requested a jury trial in this case and posted fees. On the day of trial, after the court had resolved a number of pre-trial motions, Twin Town indicated, for the first time, that it would waive its right to a jury trial. The court then inquired of Do and the attorney who had appeared with her that day for the first time, whether she would waive as well. Neither Do nor the attorney ever informed the court that he was substituting in as her attorney of record. Instead, they had characterized counsel's role vaguely as "associating," while making it clear that Do herself would continue to represent her own interests. Under those confusing circumstances, the court erred by accepting a waiver of Do's right to a jury trial from the attorney, without confirming it with her directly.

The next morning, after last minute settlement efforts failed, the court erred again by refusing to reinstate Do's jury trial right. Although the trial court has discretion in deciding whether to relieve a party from a jury trial waiver, the significance of the jury trial right means the court cannot decline to do so without justification. Here, the court's refusal to reinstate Do's jury trial right was based on its mistaken belief that Do had engaged in a prior pattern of wavering on her demand for a jury trial, and that it was she, rather than the lawyer acting as her co-counsel, who had waived her right to a jury trial the prior afternoon. The record does not support either belief. Since both parties had prepared for a trial by jury, and the court did not inquire about the availability of a jury panel before denying Do's request to be relieved of her waiver, there is no evidence that

either the court or Twin Town would have been prejudiced by an order relieving Do of her waiver.

We therefore reverse the judgment.

FACTS

This lawsuit arises out of an automobile accident in which Do was rear-ended by another driver, Florena Randolph, after Do had slowed to avoid hitting an item that fell out of a truck in front of her. As described by Twin Town's attorney in his opening statement, Do's injuries included a hip fracture requiring surgery, as well as a neck fracture that required pins. She also had "issues with the hardware," which had to be removed eight months later. Her orthopedic surgeon restricted her from running for 10 months after the accident.

Do filed suit against Randolph, as well as Randolph's employer, Twin Town. All three parties demanded a jury trial. Do later settled with Randolph for \$100,000 and, as a result, dismissed the complaint against her. Do proceeded to trial against Twin Town.

Although Do was represented by attorneys at various times, she began representing herself in January 2017, three months before the scheduled jury trial. Do filed her jury fees in March 2017.

Do and Twin Town prepared to try the case to a jury, submitting to the court proposed jury instructions and verdict forms. Both announced ready for trial on the morning of April 10, 2017. During that morning session, the court discussed the jury selection process that would be followed and also ruled on both sides' motions in limine.

When the court reconvened after lunch, Do was accompanied by an attorney, Peter Nisson.¹ The court immediately addressed Nisson, stating "I understand

¹ According to an April 6, 2017, retainer agreement filed by Do in support of her motion for a new trial, Nisson's role in the case was to "represent the rules and laws and case example" while Do would do opening and closing statements, examine

you just substituted in.” Nisson responded “Yes, I’m associating,” and the court repeated “Associating.” The court turned to Do, and asked her if she would still be asking questions or arguing, to which Nisson responded “[s]he might.” Do responded “We rotate, your honor.”

Instead of clarifying attorney Nisson’s legal status, the court then explained to Do and Nisson that it would not permit them to share the examination of any single witness as only one person per side would be allowed to examine any witness. The court then asked Nisson “anything else? We have the [jury] panel out there right now.” Twin Town’s counsel immediately interjected that “defense will waive jury, at this point,” and that he had “talked to the plaintiff about whether they would or not.” Counsel also informed the court he had spoken with Nisson about allowing the trial judge to act as a settlement officer “at some point—whenever time allows—if we have a stipulation.”

The judge agreed that he would need a stipulation, on the record, to act as a settlement officer. The court then asked Do and Nisson “what is your position with respect to the jury trial at this point? [¶] My recollection is, at some point, you said you were willing to waive jury. And now we have the jury here, and the defense has waived jury. [¶] So it falls to you, Ms. Do, and your attorney—your colleague, Mr. Nisson, co-counsel, to decide whether or not you want to go with a jury or whether you want a judge to try the case.”

Do promptly responded “You decide is great [*sic*], the best, your honor.” The court directed Do to consult with Nisson before deciding and offered them the jury room to have a private conversation about the potential jury waiver. The court also suggested Do and Nisson discuss the proposal for a settlement conference. Nisson immediately responded “We would definitely stipulate to that, your honor.” After some

witnesses and “make[] all the decisions” The trial court was not privy to that agreement until after the trial was completed.

additional colloquy, which included Do posing some questions that related to an earlier ruling by the court about medical bills, the court declared a recess so Do and Nisson could have their discussion: “Go talk to your lawyer.”

Following the recess, Do attempted to explain to the court her concern was about future medical bills. She also briefly referenced her daughter’s college plan. When she finished speaking, Nisson said “Your honor, we are requesting—we are willing to waive jury and proceed with a court trial. And stipulate to have a settlement discussion, as well, by the same judge.” Do said nothing on those subjects.

The court responded: “Okay. So both sides, having waived jury, it is now a court trial. [¶] And so we are going to, at this point, excuse the jury and thank them for coming up. [¶] . . . [¶] Now let’s talk about the content of a settlement conference.” The court then explained why it thought it might be inappropriate for the same judge who conducts a settlement conference to then preside over a court trial and suggested, “at least in the short-term,” that it find out if any other judge on the civil panel might be available to conduct a settlement conference that same afternoon. Both Twin Town’s counsel and Nisson agreed with the proposal.

Do herself never responded to the court’s settlement conference proposal on the record. Nonetheless, the record reflects that another judge, Ronald Bauer, was located to conduct the settlement conference at 3:00 p.m. that same afternoon. The conference ended at 4:15 p.m., without any settlement.

The parties reconvened for trial the following morning, and before any other proceedings were conducted, the court acknowledged Do’s filing of a document captioned “request to continue jury trial.” The entire text of the request states: “This motion is requesting for continuing [*sic*] jury trial due to we has [*sic*] not signed the waive [*sic*] of jury trial and want to continue the jury trial.”

The court promptly rejected Do’s request, which it seems to have interpreted, without significant inquiry or clarification, as a request to “continue” the

scheduled trial to a later date. The court said, “with respect to a continuance, this is the time and place for trial. You will all recall that yesterday afternoon at 1:30, we had 45 people standing in the hallway, at which point Mr. Wood, on behalf of defense, offered to waive jury. [¶] I inquired of Ms. Do as to whether or not she was agreeable to waive jury. She was starting to ask me questions. I suggested that I was not the appropriate person to ask questions of, that her co-counsel, Mr. Nisson, was the appropriate party. [¶] I then invited them to repair to the jury room to discuss. They did so. They returned. They indicated—at this point in time, Ms. Do specifically indicated that she was agreeable to waive jury. That waiver was done on the record. [¶]

Apparently, Ms. Do has reconsidered overnight. I cannot allow this back and forth of one minute, ‘I want a jury,’ the next minute, ‘I don’t want a jury.’ [¶] I think on an earlier date, Ms. Do indicated she didn’t want a jury, didn’t need a jury, at one of the C[ase] M[anagement] C[onference]s. [¶] And now, today, she wants a jury, but only, apparently, with a continuance of trial to boot. [¶] And so the request is denied. We are going to go forward with this trial.”

The court then turned its attention to the contents of a large binder submitted by Do that morning, and inquired whether Do or Nisson would be giving the opening statement. Nisson responded that he would do it. Do then began trying to explain to the court why she wanted to have a trial with “public opinions” and why she believed both sides would be “feeling better” if “we just do, like, public”—possibly, but not clearly, referring to a jury trial.

At that point, Nisson stated “I think she is requesting a jury trial now, without a continuance.” The court again rejected the idea: “Nevertheless, the waiver was made on the record, after we had invited 45 people from the community to come up, already in the hallway. I was ready. The request to waive [jury] trial by the defense caused me [to inquire of Ms. Do], having recalled that . . . Ms. Do previously had indicated that she was willing and wished to have a court trial . . . [¶] And Ms. Do

clearly had a full and complete opportunity to discuss with you, Mr. Nisson. [¶] . . . [¶] So I don't have any qualms about the waiver of the jury trial that was taken, because your waiver was made with a full opportunity for discussion and advice from a very qualified, competent attorney."

The court then explained why it would not reinstate the jury: "And so here we are today with you suggesting that I call another 45 people. Then we would be up to 90 people, for this case. At some point the taxpayers have to be considered as well. And, quite frankly, the individual jurors need to be considered as well. [¶] And so if you had reconsidered while those 45 people were standing in the hallway, I would say, 'Fine. We'll just wheel them in.' But I am not going to do this over and over again. And so the election has been made. It stands. We move forward with opening statement at this point."

Do then suggested they could "just get, like, randomly 12 people only. We don't need to select." The court declined: "Ms. Do, I have ruled. So the discussion is over."

The parties then proceeded with what turned out to be a three-day court trial to resolve disputes over whether Twin Town's employee, Randolph, was negligent in failing to stop in time to avoid hitting Do, and whether Do remained unable to work as an intensive care nurse as a consequence of her injuries and resulting complications. At the conclusion of trial, the court announced its decision in favor of Do.

The court awarded Do past medical expenses of \$2,500, plus \$60,000 in damages for past lost earnings. The court awarded Do no damages for either future medical expenses or future lost earnings. The court also awarded Do \$125,000 in damages for pain and suffering, and allocated fault for the accident 75% to Randolph, and 25% to the (apparently unknown) driver of the truck who dropped the debris on the freeway.

After reducing Do's non-economic damages based on the allocation of fault, and then offsetting other amounts, including the Randolph settlement, against the court's award, Do's net judgment against Twin Town was \$47,917. Twin Town then moved for an award of costs based on the fact Do's net recovery did not exceed the settlement offer it made to her pursuant to Code of Civil Procedure section 998. The court awarded Twin Town \$12,943 in costs.

DISCUSSION

Do's sole contention on appeal is that the court improperly denied her a jury trial—first by allowing Nisson, who never formally substituted in as her counsel of record, and whose legal status as a result remained unclear, to purportedly waive that right on her behalf, and second by refusing to relieve her of that waiver when she requested the jury be reinstated the next morning before the parties gave their opening statements.

Article I, section 16, of the California Constitution states in relevant part: "Trial by jury is an inviolate right and shall be secured to all." Because the right to a trial by jury is "a basic and fundamental part of our system of jurisprudence . . . , it should be zealously guarded by the courts." (*Cohill v. Nationwide Auto Service* (1993) 16 Cal.App.4th 696, 699.) Consequently, "[i]n case of doubt . . . , the issue should be resolved in favor of preserving a litigant's right to trial by jury." (*Ibid.*)

Nonetheless, "[i]n a civil cause a jury may be waived by the consent of the parties expressed as prescribed by statute." (Cal. Const., art. I, § 16.) Code of Civil Procedure section 631 prescribes the ways in which a party can waive a jury in a civil case, including "(1) By failing to appear at the trial. [¶] (2) By written consent filed with the clerk or judge. [¶] (3) By oral consent, in open court, entered in the minutes." (Code Civ. Proc., § 631, subd. (f)(1-3).)

If a party has waived the right to a jury trial in accordance with section 631, subdivision (g) of that statute makes clear the right may be reinstated by the court:

“(g) The court may, in its discretion upon just terms, allow a trial by jury although there may have been a waiver of a trial by jury.” And “it is well settled that, in light of the public policy favoring trial by jury, a motion to be relieved of a jury waiver should be granted unless, and except, where granting such a motion would work serious hardship to the objecting party.” (*Boal v. Price Waterhouse & Co.* (1985) 165 Cal.App.3d 806, 809.) More than one hundred years ago, the California Supreme Court stated a proposition that remains true today: “We think that, as a general rule, a party should be relieved from a stipulation waiving a jury, where the same can be done without injury to the other side, and without disarranging the orderly conduct of the business of the court.” (*Ferrea v. Chabot* (1898) 121 Cal. 233, 235.)

As the Supreme Court has made clear, however, the trial court’s discretionary decision to grant or deny relief from a jury trial waiver will not be disturbed in the absence of abuse: “[a]s with all actions by a trial court within the exercise of its discretion, as long as there exists ‘a reasonable or even fairly debatable justification, under the law, for the action taken, such action will not be here set aside, even if, as a question of first impression, we might feel inclined to take a different view from that of the court below as to the propriety of its action.’” (*Gonzales v. Nork* (1978) 20 Cal.3d 500, 507.)

After closely reviewing the record before us, we find that, for the reasons discussed below, the trial court abused its discretion in denying Do the jury trial she requested.

1. *Nisson’s Authority to Waive a Jury Trial on Do’s Behalf*

Although the trial court recalled that Do herself, following her conference with Nisson, personally waived her right to a jury trial on the first day of trial, the record

does not verify this recollection.² Do was present, but it was Nisson who told the court “we are willing to waive jury and proceed with a court trial.” Do said nothing. The court promptly accepted the jury trial waiver without any inquiry of Do or asking her to confirm it.

Do now contends that because she remained at all times her own counsel of record in the case, Nisson had no authority to waive her right to a jury trial. We agree.

“The attorney of record has the exclusive right to appear in court for his client and neither the party himself nor another attorney should be recognized by the court in the conduct or disposition of the case.” (*Epley v. Califro* (1958) 49 Cal.2d. 849, 854.) The fundamental problem in this case is that attorney Nisson’s legal status was never clarified. When counsel suddenly appeared on the first day of trial, it was incumbent on the trial court to engage in that clarification process to determine exactly what Nisson’s legal status would be going forward, with an eye to determining whether among other things, he had authority to waive Do’s constitutional right to a jury trial. The record indicates that no such process occurred.

² When Do requested the jury be reinstated the next morning, the trial court specifically recalled it was Do herself who had waived her right to a jury trial. The reporter’s transcript quoted above, demonstrates that the court’s recollection in this area was flawed. One of the attorneys representing Twin Town later gave a detailed—and remarkably incorrect—summary of what occurred, in a declaration submitted in response to Do’s motion for a new trial. The trial court seemed to rely on this inaccurate declaration as a basis for denying Do’s motion for new trial. As the court explained in its minute order: “Mr. Tarneja’s declaration provides a detailed description of the events which occurred on the first day of trial where, after motions in limine and other pre-trial matters were completed, the defendant announced that it waived its right to a jury; thereafter, the court asked [Do] and Mr. Nisson to privately discuss whether the plaintiff wanted to continue with a jury or by bench trial and after doing so [Do] and Mr. Nisson both stated on the record that they both agreed to waive the jury and proceed with a bench trial.” The reporter’s transcript of the actual colloquy between the court, counsel, and Do confirms this statement was inaccurate.

Although Do herself represented to the trial court that she and Nissan would be sharing certain responsibilities during trial, Nissan denied he was substituting in as her attorney of record and there is no evidence Do agreed to allow him to represent her for all purposes. To the contrary, her comments consistently reflected her intent to retain direct control over the litigation. The trial court therefore had no basis to find that Nissan had actual authority to waive Do's right to a jury trial.

Do relies on *McMillan v. Shadow Ridge at Oak Park Homeowner's Assn.* (2008) 165 Cal.App.4th 960, 966 (*McMillan*) for the proposition that when a party is acting as her own attorney of record, the trial court and other parties "are duty-bound to recognize her as such and to treat her accordingly." *McMillan* may be factually distinguishable, but that statement remains a correct statement of the law.

A second complicating factor that impacts our waiver analysis is the language issue. It is impossible for us, based on this record, to overlook Do's lack of fluency with the English language, and it is apparent this is an issue that should have been fleshed out by appropriate inquiry. Absent such an inquiry, we cannot presume Do ratified Nissan's jury waiver statements when she remained silent in their wake.

Given both of those factors—Nissan's lack of explicit authority to bind Do, and Do's limited command of English—we cannot find that attorney Nissan had the legal authority to waive Do's right to a jury trial or that Do, through her silence, ratified any such waiver offered by Nissan.

2. *The Trial Court's Discretionary Refusal to Relieve Do from the Waiver*

Do also contends the court abused its discretion by refusing to grant her relief from the prior day's jury trial waiver, when she requested it before opening statements were made. Once again we agree.

Although the issue of prejudice to the opposing party seems to weigh heavily in evaluating whether relief from a jury trial waiver should be granted (*Boal v.*

Price Waterhouse & Co., supra, 165 Cal.App.3d at 809), a court may also rely on other factors to justify a denial: “In exercising its discretion, a trial court may consider diverse factors: ‘[D]elay in rescheduling the trial for jury, lack of funds, timeliness of the request and prejudice to all the litigants.’ [Citations.] The court may also consider, ‘prejudice to . . . the court, or its calendar’ [citation], the reason for the demand, i.e., whether it is merely a ‘pretext to obtain continuances and thus trifle with justice’ [citation], whether the parties seeking the jury trial will be prejudiced by the court’s denial of relief [citation] and whether the other parties to the action desire a jury trial.” (*Day v. Rosenthal* (1985) 170 Cal.App.3d 1125, 1176 (*Day*).)

In *Day*, which involved several related cases consolidated for trial, the appellant, Rosenthal, had repeatedly and affirmatively waived jury in the various cases over a period of years. Then, only five weeks before the scheduled court trial—which had been estimated to last anywhere from five to twelve months and was predicted to “‘be the longest civil trial in the history of this County’”—Rosenthal sought relief from his jury waiver. (*Day, supra*, 170 Cal.App.3d at p. 1176.) As the appellate court noted, granting that request “would entail ‘all sorts of additional complex planning . . .’ [and] a ‘bifurcation or unconsolidation,’” and “would probably have required vacating the stipulated trial date selected months earlier.” (*Id.* at p. 1177.) The appellate court also inferred the trial court had viewed Rosenthal’s last minute jury request as “a ploy to obtain a continuance,” which he had unsuccessfully asked for several times in the run-up to the trial date. (*Ibid.*) For both of those reasons, the appellate court concluded the trial court did not abuse its discretion in denying the request.

This case involves none of those complexities. Both parties had requested and prepared for a jury trial; as a result, the court scheduled the case to proceed as a jury trial. Although Do’s written request for relief from her prior day’s jury waiver was confusingly captioned a motion to “continue” the jury trial—and the court initially construed it as a request to delay the proceedings—Nisson immediately clarified that Do

was simply asking to move forward with the scheduled jury trial without any delay; that is to “continue” with the jury trial that both sides had indicated they wanted as recently as one day earlier.

Although the trial court here, similar to the court in *Day*, seemed to view Do’s attempt to reinstate the jury as part of a pattern of waffling on the issue, and perhaps even a deliberate attempt to manipulate the trial process (as the court said, “I cannot allow this back and forth of one minute, ‘I want a jury,’ the next minute, ‘I don’t want a jury’” and later, “I am not going to do this over and over again”), the record does not support that view.

Contrary to the court’s stated impression, the record does not indicate Do had ever withdrawn her jury trial request before Twin Town announced its own willingness to waive jury on the day of trial. The court’s recollection that it was Do herself who “specifically indicated that she was agreeable to waive jury” after discussing the issue with Nisson, was also mistaken, undermining the court’s conclusion that Do’s waiver may have been strategic, rather than inadvertent.³

But even assuming Do’s waiver was intentional, it would still be an abuse of discretion to deny her relief in the absence of some justification for the refusal. While it is true, as Twin Town points out, that “a simple change of mind is not enough to *justify relief* from a jury waiver” (*Day, supra*, 170 Cal.App.3d. at p. 1177, italics added), “a simple change of mind” is not by itself a basis to deny relief. Instead, the salient question

³ In her subsequent motion for a new trial, Do argued that she had mistakenly believed she was waiving the right to voir dire, but not the jury trial itself. Twin Town’s counsel responded by claiming in his declaration that “[a]fter Plaintiff waived her right to a jury trial, she never said she had mistakenly waived a jury trial until after the close of evidence. In fact, Plaintiff did not make any such complaint until after the Court gave its decision after the close of the parties’ presentation of evidence.” Counsel’s clear implication is that Do revived her jury trial claim only because she was unhappy with the outcome of the court trial. That assertion ignores the fact that Do asked the court to reinstate the jury before trial had commenced.

must be whether there has been some prejudicial change in circumstances between the party's jury waiver and the request to be relieved from it. (See, *Gonzales, supra*, 20 Cal.3d. at p. 508 ["In view of the change in circumstances caused by Nork's delay in seeking relief, the trial court clearly acted within its discretion in denying his motion"].)

The court in rejecting Do's request to reinstate the jury trial, explained that, having called 45 prospective jurors to wait in the hallway on the prior afternoon, it would be too great a burden on the court, the taxpayers, and the jurors themselves, to request that a second group of 45 prospective jurors report to the courtroom that morning. Such a position was premature at best as any potential prejudice could not be determined without contacting the jury commissioner to determine if there were sufficient jurors available in the courthouse to serve that day. If there were, it would impose no particular burden on those jurors who were already in the building for them to be summoned to the courtroom for service, nor would there be any burden on the taxpayers since those prospective jurors would presumably be paid whether they served on a trial or not. If there were not sufficient jurors available, then a prejudicial change in circumstances might have been established by the fact that relieving Do from her waiver would have required a continuance of the trial to a later date.

As succinctly stated in *Bishop v. Anderson* (1980) 101 Cal.App.3d 821, 824-825, when the party who waives a jury at the beginning of trial seeks prompt relief from that waiver, before any significant change in circumstance, the court abuses its discretion in denying the relief: "[N]o reasonable justification for denial of the jury trial request appears from the record. The trial by jury had been scheduled for the day that respondent made known his waiver of trial by jury, so there was no possibility of delay from rescheduling. Appellants offered to tender payment for jury fees, thereby eliminating any problem concerning lack of funds. The timeliness of appellants' request to withdraw his waiver was immediate, prior to the commencement of trial. No prejudice to the other party, the court, or its calendar was argued or found. In sum, we find no

factor sufficient to support the trial court's exercise of discretion in denying appellants a right to jury trial. The denial of a jury trial after waiver where no prejudice is shown to the other party or to the court is prejudicial."

We conclude the same is true here.

3. *Requirement of Prejudice to Justify a Reversal on Appeal*

It is well established that the "wrongful denial of the right [to jury] is reversible per se." (*Golden West Baseball Co. v. City of Anaheim* (1994) 25 Cal.App.4th 11, 50; *Martin v. County of Los Angeles* (1996) 51 Cal.App.4th 688, 698.) However, some courts have concluded that when the alleged error is the court's abuse of discretion in denying a party relief from its waiver of a jury trial—rather than the erroneous denial of a jury trial in the first instance—then actual prejudice must be shown to justify a reversal of the ensuing judgment. In such cases, the claim is that a "writ of mandate is the appropriate vehicle to secure a jury trial allegedly wrongfully withheld without the usual demonstration of prejudice or miscarriage of justice required to obtain a reversal after judgment." (*Gann v. Williams Brothers Realty, Inc.* (1991) 231 Cal.App.3d 1698, 1704 (*Gann*).)

However, other courts have expressed skepticism about the propriety of drawing a distinction between the effect of the erroneous denial of a jury trial in the first instance and the erroneous denial of a motion to be relieved of a jury trial waiver. (See *Martin v. County of Los Angeles*, *supra*, 51 Cal.App.4th at p. 698 ["Whatever the merits of these cases on their facts, they have no application here"].) We agree. In either case, the harm inflicted by the error is the same—the wrongful denial of a party's "inviolable" right to a trial by jury—and in either case, the aggrieved party would have the same theoretical opportunity to remedy the error by seeking a writ of mandate rather than waiting to challenge the erroneous decision on appeal.

As the *Gann* court acknowledges, “it is difficult to envision precisely how one shows prejudice from denial of a jury trial aside from that inherent in deprivation of a constitutional right.” (*Gann v. Williams Brothers Realty, Inc.*, *supra*, 231 Cal.App.3d at p. 1704.) Adopting the rule would mean that for all practical purposes, a writ of mandate is the only avenue for challenging the trial court’s erroneous refusal to relieve a party from a jury trial waiver. As this case illustrates, that is sometimes no remedy at all. Here, Do had no realistic opportunity to petition for a writ of mandate after the court refused to relieve her from her waiver of the jury trial. Within minutes of that ruling, opening statements were under way, and the court had rendered its decision within a week. To deny Do the opportunity to challenge that decision in this appeal from that judgment would effectively deny her any remedy at all. That result would be inconsistent with our obligation to zealously guard the right to a jury trial.

DISPOSITION

The judgment is reversed, and the case is remanded to the trial court for a new trial. Do is to recover her costs on appeal.

GOETHALS, J.

WE CONCUR:

O’LEARY, ACTING P. J.

IKOLA, J.